

REMARKS/ARGUMENTS

The final Office Action dated April 12, 2006 has been carefully considered. Claims 1-12 and 21 are pending in the present application with claim 1 being in independent form.

Claims 1 and 21 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Applicant's admitted prior art (AAPA) and in view of U.S. Patent No. 2,657,926 to Price et al. Reconsideration of this rejection is respectfully requested.

Applicant notes that the Examiner adds new prior art, the AAPA, in this final Office Action after an RCE was filed. While the Examiner's effort to assure that claims are allowed that distinguish from the art is acknowledged and appreciated, it seems unfair to make this rejection final since AAPA was available as prior art from the beginning of the prosecution. Citing different prior art in each Office Action is acceptable. But, Applicant can never make a final argument, when the next Office Action raises new issues that could not be anticipated from a previous Office Action. It is requested that the finality be withdrawn, until the prior art relied on is established and Applicant might address that art.

The Examiner contends that the AAPA substantially discloses the features of claim 1. The Examiner notes however, that the AAPA does not teach that the moving film feeding device is a linear feeding device that holds film and moves linearly between an initial position and another position towards the trimming device and does not teach that the film support is also a film holder that holds the film during trimming. The Examiner, however, points to Price et al. as disclosing these features. Applicants respectfully disagree.

As was noted in Applicants' previous response, claim 1 of the present application relates to an apparatus for indexing a length of film for severance including "a film holder between the linear feeding device and the trimming device on the in-feed side of the trimming device that is operable between a first position wherein a gap is provided for the film to pass through during feeding to the trimming device, and a second position wherein the gap is closed so that the film is clamped by the film holder between the feeding device and the trimming device during the time the film is being severed by the trimming device substantially along a line on which the film is being severed."

The AAPA does not disclose this feature. The Examiner contends that the AAPA discloses a film support 108 between the linear feeding device 20 and the trimming device 53 that is operable between a first position where a gap is provided for the film 17 to pass through to the trimming device 110 and a second position. Applicants respectfully disagree.

As an initial matter, while Fig. 1 of the present application does illustrate a prior art device, the reference numerals for the linear feeding device 20, trimming device 53 and film 17 do not appear in Fig. 1 or in the portion of the specification describing Fig. 1. It appears that the Examiner has confused reference numerals from Price et al. with those in the AAPA. Further, as is described in pages 3-4 of the specification of the present application, the platform 108 is fixed, and thus does not move from a first position to a second position.

Further, in the AAPA, there is always a tolerance gap 114 between the fixed platform 108 and the trimming support 112. Thus, the AAPA does not disclose “a film holder... that is operable between a first position wherein a gap is provided for the film to pass through during feeding to the trimming device, and a second position wherein the gap is closed,” as is required by claim 1 of the present application. Similarly, since the AAPA does not disclose the claimed film holder, the AAPA does not disclose a film holder “on the in-feed side of the trimming device,” as is required by claim 1 of the present application.

In addition, since the AAPA does not disclose a film holder movable between a first position and a second position wherein the gap is closed so that the film is clamped by the film holder, the AAPA similarly does not disclose clamping the film “substantially along a line on which the film is being severed.” Indeed, the AAPA makes no mention of the film holder clamping the film at all and teaches away from such a device since the plate 108 is fixed in place and there is always a gap 114 between the plate 108 and the trimming support 112.

Furthermore, as was described in Applicants’ previous response, Price et al. does not disclose that the tape is clamped substantially along a line on which it is being severed, as is required by claim 1. As is illustrated in Figure 1 of Price et al., finger 70 is spaced in the feed direction from the line on which the tape is being severed by at least the thickness of one side of the blade holder. In addition, the finger 70 of price et al. is not “on the in-feed side of the trimming device” as is required by claim 1 of the present application.

Accordingly, it is respectfully submitted that claim 1 and the claims depending therefrom, are patentable over the cited art for at least the reasons described above.

Claims 1 and 21 have also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and further in view of U.S. Patent No. 5,079,980 to Oakes et al. Reconsideration of this rejection is respectfully requested.

With regard to claim 1, the Examiner contends that the AAPA and Price et al. substantially disclose the features of claim 1. Applicants respectfully disagree.

As noted above, the AAPA and Price et al. fail to show or suggest an apparatus for indexing a length of film for severance including “a film holder between the linear feeding device and the trimming device on the in-feed side of the trimming device that is operable between a first position wherein a gap is provided for the film to pass through during feeding to the trimming device, and a second position wherein the gap is closed so that the film is clamped by the film holder between the feeding device and the trimming device during the time the film is being severed by the trimming device substantially along a line on which the film is being severed,” as is recited in claim 1 of the present application.

Oakes et al. similarly fails to show or suggest this feature. As is illustrated in Figs. 7 and 8 of Oakes et al., there is a substantial gap formed between the downstream end 133 of the label spring 128 and the line on which the film is being severed by the cutter (122, 148). Thus, Oakes et al. does not disclose clamping the film “substantially along a line on which the film is being severed,” as is required by claim 1 of the present application.

Further, while Oakes et al. does appear to illustrate a film holder positioned between the feeding device and the trimming device, as is described in detail below, the Examiner has failed to identify any motivation or suggestion to combine this feature with the design of Price et al.

Accordingly, it is respectfully submitted that claim 1, and the claims depending therefrom, are patentable over the cited art for at least the reasons described above.

Claims 1 and 21 have also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. Reconsideration of this rejection is respectfully requested.

The Examiner contends that Price et al. substantially teaches all of the limitations of claim 1. The Examiner, however, concedes that Price et al. does not explicitly teach that the film holder is located between the linear feeding device and the trimming device on the in-feed side of the trimming device. The Examiner contends however, that the use of a film cutting apparatus that is a holding device located between the feeding device and the trimming device is well known in the art and is taught by Oakes et al. Applicants respectfully disagree.

First, as is noted above, Price et al. and Oakes et al. fail to disclose an apparatus for indexing a length of film for severance including “a film holder between the linear feeding device and the trimming device on the in-feed side of the trimming device that is operable between a first position wherein a gap is provided for the film to pass through during feeding to the trimming device, and a second position wherein the gap is closed so that the film is clamped by the film holder between the feeding device and the trimming device during the time the film is being severed by the trimming device substantially along a line on which the film is being severed”, as is recited in claim 1 of the present application. As is noted in detail above, in both Price et al. and Oakes et al., there is a gap between the position at which the film is held, or clamped, and the line along which the film is severed.

For this reason alone, it is believed that claim 1 is patentable over the cited art.

Further, as has been previously mentioned, the Examiner has failed to identify any motivation to combine Price et al. with Oakes et al. In response to this argument, the Examiner contends that this argument is not persuasive since the trimming device and holding device of Oakes et al. and Price et al. are functionally equivalent and therefore it would have been obvious to one of ordinary skill in the art to combine them. Applicants’ respectfully disagree.

As discussed in Applicant’s previous response, there is no motivation to combine Price et al. and Oakes et al. to yield a device in which the holder is between the feeding device and the trimming device as is required by claim 1 of the present application. As is noted in the at M.P.E.P. at §2144 VI(C), “[T]he mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant's specification, to make the necessary changes in the reference device.” The Examiner has

identified no such motivation modify the design of Price such that the finger 70 would be positioned between the feeding device and the trimming device, as allegedly taught by Oakes et al.

Furthermore, as has been noted previously, even if such a motivation were present, the combination of Price et al. and Oakes et al. would not yield the apparatus of claim 1. As is described above in detail, Price et al. and Oakes et al. fail to show or suggest clamping the tape along a line on which the film is being severed as is required by claim 1.

Accordingly, it is respectfully submitted that claim 1 and the claims depending therefrom, are patentable over the cited art for at least the reasons described above.

Claims 2-4 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and Oakes et al. as applied to claim 1 and further in view of U.S. Patent No. 3,813,974 to Friberg et al. Claims 2-4 were also rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view of Friberg et al. Reconsideration of these rejections is respectfully requested.

Claims 2-4 depend from claim 1, either directly or indirectly. As noted above, it is believed that claim 1 is patentable over the combination of the AAPA, Price et al. and Oakes et al. for at least the reasons described above. Further it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes et al. and Friberg et al. since none of these references show or suggest the patentable features of claim 1 described above.

Claim 5 has been rejected under 35 U.S.C. §103(a) as allegedly being patentable over the AAPA, Price et al. and Oakes and further in view of U.S. Patent Application No. 2002/0039119 to Igarashi. Claim 5 has also been rejected under 35 U.S.C. §103(a) as allegedly being patentable over the Price et al. in view of Oakes et al. and further of view of Igarashi. Reconsideration of these rejections is respectfully requested.

Claim 5 depends from claim 1. As noted above, it is respectfully submitted that claim 1 is patentable over the combination of the AAPA, Price et al. and Oakes et al. Further, it is respectfully submitted that claim 1 is patentable over the combination of the AAPA, Price et al., Oakes et al. and Igarashi since none of these references show or suggest the patentable features of claim 1 as is described above.

Claims 6 and 7 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and Oakes and further in view of U.S. Patent No. 2,214,478 to Rosenthal and U.S. Patent Publication No. 2002/0057912 to Ando. Claims 6 and 7 have also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view of Rosenthal and Ando et al. Reconsideration of these rejections is respectfully requested.

Claims 6 and 7 depend from claim 1, either directly or indirectly. As noted above, it is believed that claim 1 is patentable over the combination of the AAPA, Price et al. and Oakes et al. Further, it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes et al., Rosenthal and Ando et al., since none of these references show or suggest the patentable features of claim 1 described above.

Claim 8 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and Oakes and further in view of U.S. Patent No. 3,756,899 to Von Hofe et al. Claim 8 has also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view of Von Hofe et al. Reconsideration of these rejections is respectfully requested.

Claim 8 depends from claim 1. As noted above, it is believed that claim 8 is patentable over the combination of the AAPA, Price et al. and Oakes et al. Further, it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes et al. and Von Hofe et al. since none of these reference show or suggest the patentable features of claim 1 described above.

Claim 9 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and Oakes and further in view of Von Hofe et al. and U.S. Patent No. 6,297,882 to Mosio. Claim 8 has also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view of Von Hofe et al. and Mosio. Reconsideration of these rejections is respectfully requested.

Claim 9 depends indirectly from claim 1. As noted above, it is believed that claim 9 is patentable over the combination of the AAPA, Price et al., Oakes et al. and Von Hofe et al. Further it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes et al., Von

Hofe et al. and Mosio, since none of these references show or suggest the patentable features of claim 1 described above.

Claim 10 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and Oakes et al. and further in view of U.S. Patent Publication No. 2002/0109217 to Nam. Claim 10 has also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view Nam. Reconsideration of these rejections is respectfully requested.

Claim 10 depends indirectly from claim 1. As noted above, it is believed that claim 10 is patentable over the combination of the AAPA, Price et al. and Oakes et al. Further, it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes and Nam since none of these references show or suggest the patentable features of claim 1 described above

Claim 11 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al. and Oakes et al. and further in view of U.S. Patent No. 6,647,872 to Dueck. Claim 11 has also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view Dueck. Reconsideration of these rejections is respectfully requested.

Claim 11 depends indirectly from claim 1. As noted above, it is believed that claim 11 is patentable over the combination of the AAPA, Price et al. and Oakes et al. Further, it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes et al. and Dueck since none of these references show or suggest the patentable features of claim 1 described above

Claim 12 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the AAPA in view of Price et al., Oakes et al. and further in view of U.S. Patent No. 5,239,904 to Yamaguchi. Claim 10 has also been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Price et al. in view of Oakes et al. and further in view Yamaguchi. Reconsideration of these rejections is respectfully requested.

Claim 12 depends indirectly from claim 1. As noted above, it is believed that claim 12 is patentable over the combination of the AAPA, Price et al. and Oakes et al. Further, it is respectfully submitted that claim 1 is patentable over the AAPA, Price et al., Oakes and Yamaguchi since none of these references show or suggest the patentable features of claim 1 described above

In light of the remarks made herein, it is respectfully submitted that claims 1-12 and 21 are patentable over the cited art and are in condition for allowance.

Favorable reconsideration is respectfully requested.

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